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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,882

09/08/2003

William Gobush

20002.0311

8086

79175

7590

07/20/2009

HANIFY & KING PROFESSIONAL CORPORATION

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EXAMINER

SAGER, MARK ALAN

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

07/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/656,882	<b>Applicant(s)</b> GOBUSH, WILLIAM	
	<b>Examiner</b> M. Sager	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Gobush (7291072). This holding is maintained from prior action for cited claims that is incorporated herein. Response to Applicant remark is provided below and incorporated herein.
3. Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Gobush (7086954). This holding is maintained from prior action for cited claims that is incorporated herein. Response to Applicant remark is provided below and incorporated herein.

***Claim Rejections - 35 USC § 103***

4. Claim 29 is rejected under 35 U.S.C. 103(a) as being obvious over Gobush ('072 and '954). This holding is maintained from prior action for cited claims that is incorporated herein. Response to Applicant remark is provided below and incorporated herein.
5. Claims 3, 12-13, 18 and 20-21 are rejected under 35 U.S.C. 103(a) as being obvious over Gobush ('072 and '954) in view of Sullivan (4158853). This holding is maintained from prior action for cited claims that is incorporated herein. Response to Applicant remark is provided below and incorporated herein.

***Terminal Disclaimer***

6. The terminal disclaimer filed on 3/24/09 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6758789, 7086954 and 7291072 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Response to Amendment***

7. The declaration under 37 CFR 1.132 filed 3/24/09 is insufficient to overcome the rejection of claims 1-29 based upon anticipation by Gobush ('954) and by Bissonette ('072) as set forth in the last Office action because: per MPEP 715.01(c), when the unclaimed subject matter of a patent, application publication, or other publication is applicant's own invention, a rejection, which is not a statutory bar, on that patent or publication may be removed by submission of evidence establishing the fact that the patentee, applicant of the published application, or author derived his or her knowledge of the relevant subject matter from applicant. Moreover applicant must further show that he or she made the invention upon which the relevant disclosure in the patent, application, publication, or other publication is based. In re Mathews, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969); In re Facius, 408 F.2d 1396, 161 USPQ 294 (CCPA 1969). In this application, although Applicant declares that any unclaimed invention disclosed in 7291072 and 7086954 was derived from the invention claimed in instant application, it fails to show derivation in manner required in that the patentee of cited patents derived their knowledge of the relevant subject matter of instant claims from instant inventor, W. Gobush.

***Response to Arguments***

8. Applicant's arguments filed 3/24/09 have been fully considered but they are not persuasive. On page 2-3, Applicant asserts that based upon the declaration by inventor, W. Gobush is sole inventor and therefore is not an invention 'by another', the Office disagrees since derivation has not been established for reasons stated above. Perfecting declaration to comply can be considered a new issue since prosecution is closed as stated below.

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9. Applicant's arguments, see page 2 of response and Terminal Disclaimer, filed 3/24/09, with respect to claims 1-29 have been fully considered and are persuasive. The judicially created double patenting holding of claims 1-29 has been withdrawn.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/  
Primary Examiner, Art Unit 3714